

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

CLIFFORD RUNYAN,

Plaintiff,

vs.

MENARD, INC.,

Defendant.

No. C15-0137

REPORT AND RECOMMENDATION

On the 15th day of April 2016, this matter came on for hearing pursuant to the Order Setting Hearing Regarding Default (docket number 9) filed by the Court on March 31, 2016. Plaintiff Clifford Runyan did not appear, nor anyone for him. Defendant Menard, Inc. was represented by its attorney, Terry J. Abernathy.

On November 16, 2015, Runyan filed a petition at law in the Iowa District Court for Linn County seeking judgment from Menard for injuries Runyan allegedly suffered when he slipped and fell at a Menard's store in Cedar Rapids, Iowa. The action was moved to this court on December 2, and Menard filed an answer on December 11.

The attorney representing Runyan in state court, Josh P. Kraushaar, is not admitted to practice in the United States District Court for the Northern District of Iowa and, therefore, did not file an appearance in this court after the case was removed. On March 14, 2016, Menard advised the Court that it was unable to submit a proposed scheduling order because Mr. Kraushaar was unable to appear in this court.

On March 15, I entered an Order requiring an attorney admitted to practice in the United States District Court for the Northern District of Iowa to enter an appearance on Runyan's behalf not later than March 25, or alternatively, that Runyan file a notice with the Court indicating that he intended to proceed without an attorney. Runyan was advised that if he "fails to comply with this requirement, then he will be considered in default and

the Court will take further appropriate action.” No attorney appeared on Runyan’s behalf and Runyan did not file the required notice.

I then entered an Order setting a hearing on April 15, directing Runyan to “appear and show cause why he should not be found in default.” Runyan was specifically advised that *“if he fails to appear, he can be found in default and the case will be dismissed.”* (emphasis in original) A copy of the Order was sent to Mr. Kraushaar, and he responded with an email to the clerk of court indicating “I have received this and will forward to [sic] orders on to Mr. Runyan.”

As set forth above, Runyan did not appear at the instant hearing and no one has appeared on his behalf. Accordingly, I respectfully recommend that this case be dismissed.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the Petition (docket number 3) filed on December 2, 2015 be **DISMISSED**. The parties are advised, pursuant to 28 U.S.C. § 636(b)(1), that within fourteen (14) days after being served with a copy of this Report and Recommendation, any party may serve and file written objections with the district court.

DATED this 15th day of April, 2016.



JON STUART SCOLES
CHIEF MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA